

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**





# 76-7236

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**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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ANNICE GILBERT,

*Plaintiff-Appellant-Cross-Appellee,*

v.

CONSOLIDATED FOODS CORP.,

*Defendant-Appellee-Cross-Appellant.*

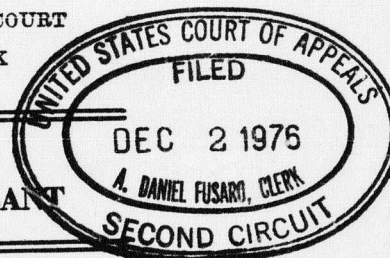
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**SUPPLEMENTAL APPENDIX OF  
DEFENDANT-APPELLEE-CROSS-APPELLANT**

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PHILIP HANDELMAN, Esq.  
360 Lexington Avenue  
New York, New York 10017  
(212) MU 2-9180  
*Attorney for Plaintiff-Appellant-  
Cross-Appellee*

ROGERS HOGE & HILLS  
90 Park Avenue  
New York, New York 10016  
(212) 953-9200  
*Attorneys for Defendant-Appellee-  
Cross-Appellant*

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3 jgsr

A. Gilbert - direct

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Q Draperies?

A Yes, I said draperies.

THE COURT: She said that.

THE WITNESS: And dress fabrics.

Q There came a time, did there, when you met your friend, Mr. Stanton?

A Yes.

Q About when was that?

A Well, to the present day excluding the four years that we haven't been friends, I would say twelve years altoghether.

THE COURT: You met him in 1962?

THE WITNESS: 1962, yes.

Q And had your husband known him before?

A Yes.

Q Mrs. Gilbert, you have been present here when there has been some -- I will withdraw that.

Prior to this date of March 30, 1968 that you have heard mentioned here did you ever have any discussions with Mr. Stanton with reference to his business?

A Yes.

Q And were any of those discussions or did any of those discussions involve your doing or making suggestions to him?



1 4 jgsr

A. Gilbert - direct

2 A Yes, always.

3 Q You were present when there was testimony about  
4 your suggested designs for gloves and ornamentation and  
5 fingernails and things like that?

6 A He asked me for ideas all the time. He was  
7 always talking about gloves and did I have any ideas and  
8 I gave him ideas from time to time, yes.

9 Q When you say he was always talking about gloves,  
10 would you say he was a man who although he was out eating  
11 dinner or some other social function was always very  
12 much interested in his business?

13 A Yes, he never spoke of anything else but his  
14 business.

15 Q You and your husband visited him in Long Beach,  
16 was it?

17 A He had a place in Long Beach.

18 Q And did you vacation together out at Montauk?

19 A Yes, we did, two years.

20 Q Would you say that those places, too, that the  
21 the main conversation was Mr. Stanton's business?

22 A I am afraid so, yes. It was very boring at times.  
23 Most of the time, may I add.

24 Q Aside from these ornamental suggestions you  
25 made about gloves which you say you have heard testified

\* \* \* \* \*



rmjw ll

A. Gilbert-cross

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I can't -- the dates are very difficult for me to pinpoint.  
I would say a few years before '68.

Q When you say that Mr. Stanton asked you to  
make -- at what time do you say you gave the sketch,  
which is Defendant's Exhibit M, I believe it is --

THE COURT: The mitten?

MR. STOCKELL: Yes.

A I gave that to him a few months before the  
main glove, the main idea I had --

THE COURT: A few months before March of 1968?

THE WITNESS: Yes, before I had the concept for  
that new idea.

Q Did that glove have any beneficial effects  
on the hands?

A It did on mine, yes.

Q What effects were those?

A It whitened my skin --

THE COURT: You say it did --

THE WITNESS: The glove.

Q You tried it on?

THE COURT: Did you design this yourself?

THE WITNESS: Yes.

Q You made up a glove?

A Yes, I made gloves for myself for nightwear, in



rmjw 12

A. Gilbert-cross

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1 bed, with creams. because when I do oil painting I use a  
2 lot of turpentine and things and it is very rough on my  
3 hands and I have worn night gloves since I can remember  
4 and I made them for myself.

5 Q So the night glove, which is illustrated by  
6 Defendant's Exhibit M, would have the effect of whitening  
7 the hands.

8 What other effects would it have?

9 A It would increase the circulation.

10 Q Anything else?

11 A Well, I don't have brown spots, but it might  
12 have diminished them, had I had them.

13 THE COURT: It kept you from getting them?

14 THE WITNESS: I don't know. I hope so.

15 Q What about the nails, would it have any effect  
16 on the nails?

17 A No, it wouldn't, since the fingers were not  
18 encompassed with this Lycra Spandex.

19 Q Would it compress the veins?

20 A It would have that effect, yes, temporarily.

21 Q Did you discuss the night glove which <sup>is</sup>  
22 illustrated by that Exhibit M with Mr. Stanton?

23 A I told him about it. He wasn't interested in  
24 a night glove.  
25

d t5a



b.1

1 1 rmsr A. Gilbert - cross

2 Q Was he interested in any of the beneficial  
3 effects it might have?

4 A He just said he simply wasn't interested in any-  
5 thing about the glove at that time.

6 Q You did say that it would compress the veins,  
7 though, did you not?

8 A Not at that time, no.

9 Q This night mitten would not?

10 A No. No, he said he wasn't interested and I  
11 didn't pursue it --

12 THE COURT: You didn't press the veins?

13 THE WITNESS: No, I didn't press them.

14 Q Where did you discuss the sketch with Mr. Stanton.

15 MR. HANDELMAN: Referring to Exhibit M?

16 MR. STOCKELL: Exhibit M.

17 THE COURT: The night glove?

18 THE WITNESS: Yes.

19 A In one of our meetings.

20 Q Where?

21 A At dinner.

22 Q You handed him the sketch at dinner?

23 A The sketch was given to -- I talked about the  
24 glove at dinner and the sketch was probably given to him  
25 by my husband. I gave it to my husband as I recall, when



1 2 rmsr  
2 he went out the door. I called him back and said, "Give  
3 this to Lari. He might be interested in it."

4 Q That was after the discussion?

5 A Yes.

6 Q And then you say that was after --

7 A He was not interested in the glove and I thought  
8 perhaps if he could see the sketch and understand what  
9 I meant by the power net he might be interested.

10 Q What effect would the power net have?

11 A It would simulate the hand, the skin, it would  
12 act as a massage.

13 Q Just on the back of the hand?

14 A Just on the back -- no, and also the palm, because  
15 it was encompassing that part of the hand.

16 Q Mrs. Gilbert, with respect to the March 30 meeting,  
17 -- let me withdraw that. Did you ever give Mr. Stanton  
18 a sample of the power net fabric which you would use in  
19 the night glove?

20 A I showed it to him.

21 Q You showed it to him at the dinner meeting?

22 A Not at that particular time.

23 Q When was that?

24 A When I was in his office or my husband may have  
25 showed it to him. I can't remember.



3 rmsr

A. Gilbert - cross

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1  
2 THE COURT: Let's not get into this, "My  
3 husband may have showed it to him."

4 Do you remember showing it to him yourself?

5 THE WITNESS: Yes.

6 THE COURT: Then why do you tell me that maybe  
7 your husband did? I am only interested in what you  
8 remember.

9 THE WITNESS: Because there may have been a  
10 couple of samplings.

11 THE COURT: Anything may have happened. The  
12 Reporter here may have invented this glove, as far as I  
13 know.

14 I want to know what you remember and nothing else.

15 THE WITNESS: I will try to recall. I did make  
16 him a sample of the power net -- no, I didn't. I made  
17 it for myself. I thought I had made it for him, too.

18 Q Can you remember what was discussed at the meeting  
19 at the time that you discussed the night glove? What  
20 was said?

21 THE COURT: Whenever that discussion occurred,  
22 you mean?

23 MR. STOCKELL: Yes.

24 A I said, "Lari, would you be interested in a night  
25 glove? I have this idea for a night glove."



1 He said, "I am not interested in a night glove.  
2 I want a street glove."  
3

4 Q Did you describe the glove to him? It was  
5 not a usual night glove, was it?

6 A I said, "It has this power net in it", and he  
7 still wasn't interested in it and I thought maybe he  
8 would be interested in it and that is why I made the  
9 sketch and I gave it to my husband to give to him in the  
10 morning.

11 Q Did you tell him how it might be sold, how it  
12 might be desirable?

13 A I said it could be used with a cream and that  
14 the power net would act as a massage on the hand and that  
15 might be a selling point.

16 Q You didn't mention any other beneficial effects?

17 A Well, the ones I mentioned about possibly  
18 diminishing the spots on the hands.

19 Q And increasing circulation?

20 A Of course.

21 Q And whitening the hands?

22 A Yes.

23 Q But you didn't mention compressing the veins?

24 A Certainly.

25 Q You did?



1 THE COURT: Certainly you did or certainly you  
2 did not?

3 THE WITNESS: I did.

4 Q You didn't mention anything about helping the  
5 nails grow?

6 A No, because the fabric didn't extend to the  
7 fingertips. That was only a partial wrapping around the  
8 hand and the rest of it was made of cotton.

9 Q At the time you submitted the sketch, did you  
10 ask for payment for it?

11 A No, because he said whatever ideas he would  
12 utilize, he would pay me for them. That was the under-  
13 standing.

14 THE COURT: When did he say that?

15 THE WITNESS: When I submitted any design to  
16 him, from the beginning of our relationship.

17 THE COURT: But did he ever?

18 THE WITNESS: Never.

19 Q But you didn't demand any such agreement in  
20 writing this time?

21 A No.

22 Q Mr. Stanton, I gather, was only interested in  
23 fashion gloves?

24 MR. HANDELMAN: That is what she said.

25 \* \* \* \* \*



RMJW 5

A. Gilbert-redirect

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## REDIRECT EXAMINATION

BY MR. HANDELMAN:

Q At the time that you told Mr. Stanton or suggested to him this night glove, did you go into all of the benefits that you were questioned about by counsel of that glove?

A No.

Q What did you tell him about those things?

A That it had a massage action on the hand. He wasn't interested, so I didn't go further.

MR. HANDELMAN: Would counsel produce one of the new boxes, please?

(Box handed to Mr. Handelman)

MR. HANDELMAN: No, one that is similar to this (indicating), but subsequent to it.

Do you have one of those available?

MR. SWIRE: No. What I handed you is the current package.

Q Mrs. Gilbert, give us your best memory -- now, when you say a blow-up, do you mean it was a flat piece of paper or cardboard from which a box was to be made?

A It was a flat piece of paper.

Q In other words, it was a sample?



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANNICE GILBERT,

Plaintiff,

-against-

CONSOLIDATED FOODS CORP.,

Defendant.

70 Civ. 4536

(M. E. L.)

PLAINTIFF'S PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF  
LAW.

Plaintiff proposes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1) Plaintiff, Annice Gilbert, (herein Mrs. Gilbert) is a resident of the City, County and State of New York.

2) Defendant, Consolidated Foods Corporation, (herein Consolidated) is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Chicago, Illinois.

3) Plaintiff's claim is for breach of contract, and breach of trust and confidential relationship with respect to an idea allegedly disclosed by Plaintiff pursuant to a written agreement dated March 30, 1968. Plaintiff seeks recovery of the value of her alleged idea, an accounting of Defendant's profits and punitive damages in the amount of \$250,000.

4) Aris Gloves, Inc. was a corporation organized and existing under the laws of the State of California, with its principal place of business in New York, New York. On or about July 1, 1969, it was acquired by Consolidated and since then the business has been conducted as the Aris Glove Division of Consolidated (said Aris Gloves, Inc. and Aris Gloves



Division herein collectively referred to as Aris or Defendant).

5) The President of Aris now and since 1958 is Lari Stanton (herein Stanton).

6) The husband of the Plaintiff is David Gilbert (herein Mr. Gilbert).

7) On March 30, 1968, and prior and subsequent thereto, Aris has been engaged in the business of manufacturing and selling in the United States and elsewhere ladies and mens gloves.

8) Commencing in 1962 or 1963 and since that time Lari Stanton (herein Stanton), who was and is President of Aris, was a student of Mr. Gilbert, a Yoga instructor.

9) Since 1962 or 1963 a friendship developed between Stanton and Mr. and Mrs. Gilbert, and the three of them dined together frequently and had other social contacts.

10) Prior to 1948, at which time Mrs. Gilbert married Mr. Gilbert, Mrs. Gilbert had done textile designing of upholstery fabrics, drapery fabrics, dress fabrics, tie fabrics, handkerchiefs, scarves, gloves, and other products, having worked for various design studios. Prior to her work experience she took an academic course in high school and won a scholarship to Womens' School of Design and then went to college at Hunter where she studied the history of art and languages. After having worked for various design companies, she did freelance designing work, in connection with which she had an agent who sold her designs.



11) During the period of her friendship with Stanton, Mrs. Gilbert had given Stanton a number of designs for gloves, but never received any remuneration. Stanton having consistently said he would compensate her if he used any of her designs.

12) At one point, when Stanton was having difficulty with his designer, Stanton requested of Mrs. Gilbert that she make some sketches for him, which she did. When Mrs. Gilbert said she should get \$100. for a design, and Stanton said he would only pay her \$20. a sketch, the sketches were not turned over.

13) Prior to March 30, 1968, Mrs. Gilbert had suggested various types of gloves and other products to Stanton, including gloves with simulated nails on them, a glove to be worn by a woman at night in connection with the use of cosmetics on the hand, a sketch of the latter having been given to Stanton. In some instances the Defendant manufactured the various gloves that were suggested by Mrs. Gilbert.

14) Just prior to March 30, 1968, Plaintiff told her husband that she had an idea for Stanton. That information was conveyed by Mr. Gilbert to Stanton and when Stanton called Mrs. Gilbert to find out what it was she said she would not tell him because she had not received any remuneration for her designs in the past and she was not going to reveal her idea unless he "put something in writing." Stanton suggested that he and the Gilberts have dinner together.

15) On March 30, 1968, at the Right Bank Restaurant in New York, Mrs. Gilbert reiterated that she would not tell him the idea unless she had "something in writing". Mr. Gilbert wrote out the document dated



March 30, 1968 which reads as follows:

'Right-Bank Restaurant- March 30, 1968

I, Lari Stanton-of 36 E. 36th St. Pres. of Aris Gloves-in the presence of witnesses-agree not to manufacture or reveal to anyone for a period of five years-the item of confidence that Annice P. Gilbert-will reveal to me-and agree that this item is her's solely-having originated with her-is her sole property-and should I find this item (Gilbert's) to my interest-I will manufacture it-and give her reasonable return-for her idea-

Signed

Lari Stanton(signature)  
Lari Stanton-  
Pres. Aris Gloves"

The document was read and signed by Stanton.

16) After Stanton signed the document, Mrs. Gilbert disclosed to Stanton the idea which she had, which was, in substance, that the Defendant should manufacture and sell a fashion glove made, at least in part, of Lycra Spandex, a fabric manufactured by DuPont which had been utilized in support garments such as girdles, which fabric would benefit and could be advertised to benefit the hands of the wearer of the glove cosmetically and therapeutically by creating a massaging action on the hands and thereby depressing and flattening veins, increasing the blood circulation and that the glove would otherwise have a beneficial effect, keeping the skin on the hands flat and smooth. Plaintiff also suggested that the fabric could be used for other products such as body suits, stockings, facial masks, socks and other products, and that those products would have the same beneficial effect.

17) After Stanton expressed interest in the aforesaid idea, at the meeting of March 30, 1968, he said that he would pay Mrs. Gilbert 5% to 8% of Defendant's gross sales of any glove or other product he sold in accordance with her idea. Mrs. Gilbert said that she wanted 8% and Stanton



agreed.

18) After the meeting, Mrs. Gilbert cut a piece of material out of her girdle, pinned up and sewed a rough sample of such a glove as she had suggested.

19) After the March 30, 1968 meeting, Aris embarked upon a program for the design and manufacture of such a glove as was suggested by Mrs. Gilbert, and in addition embarked upon a program for the development of a marketing and advertising campaign, engaging an advertising agency for that purpose.

20) After the March 30, 1968 meeting, Stanton located the distributor of Lycra Spandex and, on October 21, 1968, entered into an agreement with said distributor, Webco Mills, Inc., pursuant to which Aris obtained the exclusive use of Lycra Spandex in the glove industry.

21) Both Mr. and Mrs. Gilbert participated in the development of the marketing and advertising campaign, and Mrs. Gilbert participated in the design of the actual glove, Stanton having advised her of the problems he was having with the fabrics "rolling around", "fraying", "problems involving the sewing of the material", and other problems. During the course of the designing of the glove, Mrs. Gilbert made suggestions with respect to the length of the fingers and various other design features of the glove.

22) During the period March 30, 1968 to October of 1969, the latter date being the time when the glove had its formal "debut" Mr. Gilbert and Stanton had frequent discus-



sions about the glove, many of which were held during the morning Yoga instruction periods. Mr. Gilbert, at Stanton's request, prepared a voluminous amount of promotional and advertising material, many of which ideas were incorporated into the advertising and promotional campaign literature. In addition, at Stanton's request, Mr. Gilbert gave a talk on the glove to persons in the glove trade.

23) Subsequent to March 30, 1968, Mrs. Gilbert suggested to Stanton that a more formal agreement should be drawn. Stanton suggested that Mrs. Gilbert's lawyer draw one up, which was done, but he sought to reduce the amount of the percentage to be paid to Mrs. Gilbert.

24) Stanton, upon receipt of the draft agreement, requested that another one be drawn up because he did not believe that the form of the first draft was correct. A subsequent draft agreement was drawn. Both drafts were drawn up by George Cally, Esq., a New York lawyer.

25) Upon receipt of the second draft, Stanton indicated that he was sending it to his attorneys in San Francisco and assured Mrs. Gilbert that she could trust him and that she would be paid for her idea as promised.

26) Stanton admits that on numerous occasions he reaffirmed to Mrs. Gilbert and her husband the Defendant's obligation under the agreement to compensate Plaintiff for her idea.

27) On various occasions, Stanton admitted to third parties that the idea for the "Hands Beautiful" glove originated with Plaintiff.

28) Since 1969, the Defendant has manufactured and sold gloves



which are described as "Hands Beautiful", a name suggested by Mrs. Gilbert, and body suits, advertising to the public, that said products would have a beneficial effect upon the wearer as the result of the massaging action of the material. In the course of its advertising, statements were made at various times regarding the various beneficial effects which were claimed by Aris, pursuant to Plaintiff's idea.

26) Prior to the commencement of this lawsuit, the Defendant offered to make a small payment of \$9,000. to Plaintiff if she would drop her claims, which offer was rejected.

#### CONCLUSIONS OF LAW

1) The document dated March 30, 1968 is a valid and binding agreement.

2) A relationship of trust and confidence arose from the agreement of March 30, 1968 with respect to the idea given to Defendant pursuant to the agreement.

3) Plaintiff having given Defendant an idea which was of value to Defendant, and the Defendant having utilized said idea by manufacturing and selling the "Hands Beautiful" glove and body suit made from Lycra Spandex, advertising said products to have the capacity to impart cosmetic and therapeutic benefit to the wearer, all in accordance with Plaintiff's idea, without paying to Plaintiff a "reasonable return" as provided in the agreement, Defendant breached the agreement and violated the relationship of trust and confidence and Defendant is thus liable to the Plaintiff for the reasonable value of her idea.

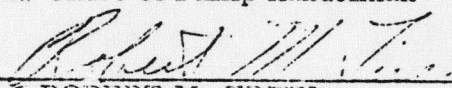


4) The parties having agreed that a "reasonable return" under the agreement was 8% of Defendant's gross sales of products manufactured and sold in accordance with Plaintiff's idea, Defendant is liable for that amount.

Dated: New York, New York  
November 20, 1974

Law Office of Philip Handelman

by

  
ROBERT M. TRIEN

Attorney for Plaintiff  
360 Lexington Avenue  
New York, New York 10017  
(212) 682-9180



Defendant.

70 Civ. 4536 (MEL)

DEFENDANT'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

1. Plaintiff, Annice Gilbert, (herein Mrs. Gilbert) is a resident of the City, County and State of New York.
2. Defendant, Consolidated Foods Corporation (herein Consolidated) is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Chicago, Illinois.
3. Plaintiff's claim herein is for breach of contract with respect to an item allegedly disclosed by plaintiff pursuant to a written document dated March 30, 1968. Plaintiff seeks recovery of the value of her alleged item, an accounting of defendant's profits, and punitive damages in the



amount of \$250,000.

4. Aris Gloves, Inc. was a corporation organized and existing under the laws of the State of California, with its principal place of business in New York, New York. On or about July 1, 1969, it was acquired by Consolidated and since then the business has been conducted as the Aris Gloves Division of Consolidated (said Aris Gloves, Inc. and Aris Gloves Division herein collectively referred to as Aris).

5. The President of Aris now and since 1958 is Lari Stanton (herein Stanton).

6. The husband of the plaintiff is David Gilbert (herein Mr. Gilbert) who, from about 1962 and until after the filing of this action, was Stanton's yoga instructor and friend.

7. Since about 1915, Aris has been engaged in the business of manufacturing and selling in the United States and elsewhere ladies and men's gloves under its name and trademark ARIS as well as under secondary trademarks.

8. For many years the glove industry, including Aris, has made and sold gloves of stretch fabrics and has devoted substantial effort to the development and sale of gloves of fabrics having significant stretch qualities so that a single size glove would fit many different sizes of hands.

9. In the 1950s a stretch yarn came on market under the trademark HELANCA, which was a synthetic



monofilament so crimped that it would stretch and retract. Fabrics composed in part of such yarn or of similar nylon fibers having good stretch and recovery qualities have been sold since the 1950s and Aris has sold fashion gloves manufactured from such fabrics since at least as early as 1960.

10. E. I. DuPont de Nemours & Company ("DuPont") in October 1959 introduced to the market its LYCRA spandex fiber. Its initial promotional releases stressed the elasticity and lightness of the fiber, its resistance to perspiration, cosmetic oils and lotions, and its possible uses in a variety of fabrics and products, including textiles, surgical stockings, swimwear and gloves.

11. LYCRA is the registered trademark of DuPont for a patented spandex fiber, the patent thereon having been issued under No. 9,039,895 on June 19, 1962. The patented fiber is an elastomeric monofilament fiber which is used in combination with other fibers such as nylon in the manufacture of stretch fabrics. The patent disclosed the use of the fiber in fabrics for many purposes including specifically gloves and medical products such as surgical stockings.

12. Commencing in or about 1963 and 1964, some of Aris' competitors began to market gloves made of LYCRA spandex lace fabrics. In spring of 1965, Aris added to its own line a fashion glove made of LYCRA spandex lace fabric and promoted it as a LYCRA stretch lace glove. Aris has continued to sell these gloves in each year since 1965.



13. In the years 1965 and 1966, one of Aris' suppliers experimented with the manufacture of and produced various smooth knitted stretch fabrics made with LYCRA spandex fibers and sought to interest Stanton at Aris in utilizing such fabrics for fashion gloves with the suggestion that such gloves could be promoted as a sort of "Supp-Hose for the hands" similar to the support hose made of elasticized fabrics then being marketed by another company under the trademark Supp-Hose.

14. Due to deficiencies in the appearance of those LYCRA spandex fabrics which were suggested to Aris by its supplier in 1965 and 1966, Stanton disapproved the fabrics and Aris did not purchase or make gloves from those LYCRA spandex stretch fabrics although it continued to sell the LYCRA stretch lace gloves and gloves made from the HELANCA knitted stretch fabric and/or other stretch fabrics.

15. In late 1967, a salesman for Aris' regular supplier encountered at another supplier's place of business a smooth knitted Lycra stretch fabric which he thought would overcome Aris' objections to the fabrics shown to it earlier. At that time or possibly shortly after the new year, the salesman showed this LYCRA spandex stretch fabric to Stanton at Aris. It had a better appearance than the LYCRA spandex fabrics Stanton had seen previously and it was suggested to Stanton that gloves of this fabric could easily be sold in a single



size to fit many different sizes of hands. The salesman caused sample gloves to be made of the material at that time. Shortly afterward Stanton of Aris sent such fabric to an independent glove cutter who also made sample gloves for him of it.

16. Said Lycra spandex fabric and sample gloves made from it were in the possession of Aris well prior to March 30, 1968, the date of the alleged agreement and alleged disclosure, and such fabric is the precise fabric which was ultimately used and continues to be used in the manufacture of a glove which Aris commenced to market in the fall of 1969 and which continues to be sold in large volume under the trademarks HANDS BEAUTIFUL and ISOTONER as well as the trademark ARIS.

17. Prior to the year 1968, Mr. Gilbert and Stanton, in the course of their relationship as yoga instructor and student, respectively, had become personal friends. During their almost daily yoga sessions, and other social meetings, Stanton would often discuss his business operations in a casual way and Mr. Gilbert would volunteer comments thereon. Stanton also became a friend of Mrs. Gilbert and often met both Mr. and Mrs. Gilbert for dinner and on other occasions.

18. Although Stanton sometimes paid \$20 to \$30 each for sketches of suggested designs of gloves submitted by non-employees and used by Aris, Mrs. Gilbert sometimes



Offered suggestions for gloves without agreement for, or payment of, compensation.

19. On or about March 30, 1968, Mr. and Mrs. Gilbert met Stanton for dinner at a New York restaurant. Over cocktails, Mrs. Gilbert offered to disclose a suggestion - she would be compensated in the event Aris should use the idea. Such offer was a part of casual cocktail chatter, but the suggestion of Mrs. Gilbert, it was reduced to writing and apparently signed by Mr. Stanton. The entire agreement which was drafted by Mr. Gilbert and apparently signed by Mr. Stanton, is as follows:

Right-Bank Restaurant      March 30, 1968

I, Lari Stanton, of 36 E. 36th Street,  
Pres. of Aris Gloves - in the presence  
of witnesses - agree not to manufacture  
or reveal to anyone for a period of five  
years - the item of confidence that  
Annice P. Gilbert - will reveal to me -  
and agree that this item is her's solely  
having originated with her - is her  
sole property - and should I find this  
item (Gilbert's) to my interest - I  
will manufacture it - and give her  
reasonable return - for her idea.

/s/ Lari Stanton  
Pres. Aris Gloves

20. Said agreement refers only to an "item" be "manufactured" by Aris and contains no specifics as price or description of the nature of the "item" to be disclosed.



21. Mrs. Gilbert thereupon over dinner disclosed to Stanton a suggestion for a ladies' cotton knit mitten (to be worn while sleeping) made with a panel of power net material (an elasticized mesh) across the back of the hand, which she suggested would act on the hands to flatten disfiguring veins. A day or so later, Mrs. Gilbert gave Stanton a sketch of her proposed night mitten as shown by a copy thereof attached as Exhibit A to these findings.

22. Stanton, at the dinner meeting and later, after receipt of the sketch, rejected the idea of a ladies' night mitten but confided that he was already experimenting with a stretch fabric for a fashion glove which might have the effect Mrs. Gilbert described of flattening the veins.

23. The idea for a ladies' night mitten disclosed by Mrs. Gilbert pursuant to the alleged agreement was never in fact utilized by Aris.

24. Mrs. Gilbert now claims that the "item" disclosed by her was the idea of using Lycra spandex in a full fashion glove and that Aris' popular HANDS BEAUTIFUL glove thus originated with her. The idea that Lycra spandex material be used in a fashion glove was not the "item" disclosed pursuant to the alleged agreement, however, and Mrs. Gilbert therefore has no rightful claim to have disclosed the idea for defendant's Hands Beautiful glove.



25. Even if Mrs. Gilbert's disputed claim that she suggested use of a LYCRA spandex fabric in gloves were accepted as true, such suggestion would have been of no value to Aris which, in common with the trade generally, was already fully familiar with gloves made of LYCRA spandex fabrics.

26. On two occasions after March 30, 1968, Mrs. Gilbert had a lawyer prepare drafts of a "formal" agreement to be signed by Stanton. Neither draft agreement concretely described the "item" Mrs. Gilbert claims to have disclosed to Stanton and the second such draft agreement did not even contain a proposed royalty figure. Stanton flatly rejected and refused to sign either agreement.

27. The parties never agreed in writing or otherwise upon a price or value for, or even a description of the "item" allegedly disclosed pursuant to the alleged agreement.

28. Despite Stanton's rejection of the proffered agreements, he continued to see the Gilberts and, during his continuing yoga sessions with Mr. Gilbert and his social meetings with Mr. and Mrs. Gilbert, he kept them informed as to the development of the HANDS BEAUTIFUL glove and the promotional materials being utilized in connection therewith. The Gilberts, and principally Mr. Gilbert, often volunteered comments and suggestions thereon, some of them being quite ludicrous.



29. The HANDS BEAUTIFUL glove and the promotional material used in connection therewith were developed by Aris personnel, independent advertising and medical consultants, and legal counsel.

30. Mrs. Gilbert further claims that she also disclosed certain promotional ideas which have been used in connection with Aris' HANDS BEAUTIFUL glove but even if that generally disputed claim were accepted as true, such promotional ideas were not the "item" to be "manufactured" which is covered by the alleged agreement and could not serve as a basis of recovery.

31. The promotional ideas Mrs. Gilbert claims to have disclosed all relate to supposed therapeutic benefits to be derived from use of the gloves.

32. In fact, none of the promotional ideas claimed to have been disclosed by Mrs. Gilbert were disclosed pursuant to the alleged agreement and, except as below mentioned, none of them originated from her at all.

33. When Aris commenced to market its HANDS BEAUTIFUL glove, it did utilize temporarily a promotional claim that the glove would have the effect of flattening the veins on the back of the hands. Mrs. Gilbert had suggested that her proposed night mitten would have such an effect but Mrs. Gilbert's suggestion of this promotional idea was made subsequent to suggestions by others to Aris that LYCRA spandex



gloves could be promoted as "support hose" for the hands and, in any event, was not concrete, was not legally usable and was of no value.

34. In mid 1970, Aris permanently abandoned all use of the claim that its Hands Beautiful gloves would flatten veins and abandoned all other therapeutic claims for such gloves after objection by the Food and Drug Administration, which took the position that the use of such claims would cause the gloves to be misbranded articles in violation of the United States Food, Drug and Cosmetic Act.

35. The promotional ideas claimed to have been disclosed by Mrs. Gilbert did not originate with her and, even if they did, they were not novel or original or concrete, were not made pursuant to any promise for compensation, were not usable because use of them would violate the Federal Food, Drug and Cosmetic Act, and were of no value.

36. Mrs. Gilbert conveyed nothing to Aris which would serve as consideration for the alleged agreement and Aris did not manufacture any item disclosed pursuant to the alleged agreement.

37. Aris continued to manufacture and sell various gloves made of Lycra spandex stretch fabric under the trademarks "HANDS BEAUTIFUL," "ISOTONER", and other names. The sales are substantial but such sales are attributable only to the extensive advertising and promotional effort of Aris and to the comfort and attractiveness of the gloves and not to



any disclosure by Mrs. Gilbert pursuant to the alleged agreement.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties hereto, and has jurisdiction over the subject matter hereof by reason of diversity of citizenship. 28 U.S.C. §1332.

2. The alleged written agreement for disclosure of an "item" in return for an agreement for "reasonable return", upon which the complaint herein is based, is merely an agreement to agree at some future date. There is no definition of the subject matter or adequate description of price. There was, therefore, no meeting of the minds and the alleged agreement is incomplete, and the alleged agreement is unenforceable because of indefiniteness.

3. The purported agreement by the parties is also void under the New York Statute of Frauds, §5-701, N.Y. General Obligations Law, since defendant's liability thereunder extends beyond one year and since it does not contain all the essential elements of an agreement.

4. Even assuming there was a potentially enforceable agreement, plaintiff is not entitled to any relief as the item alleged to have been disclosed was neither novel or original. By her own testimony, "the item" she claims to have disclosed was the use of Lycra spandex for gloves, but plaintiff's alleged idea was neither novel or unique and she had no property



right in said idea, because the idea of using Lycra spandex for gloves was specifically disclosed by DuPont as early as 1959 and, certainly, in its 1962 patent, because there is no doubt that Aris was fully familiar with this idea prior to plaintiff's alleged disclosure, and because Aris already had in its possession, prior to March 30, 1968, the exact Lycra spandex fabric it ultimately employed and continues to employ in its Hands Beautiful glove.

5. Plaintiff is not entitled to relief also because the item allegedly disclosed was not sufficiently concrete to be worthy of protection. A description of the "item" was never reduced to writing and its nature is in sharp dispute and, even accepting plaintiff's version of her disclosure, there still remained much independent development to be done by defendant and development of the particular fabric before the alleged idea could be utilized.

6. In any event, plaintiff may not recover because it appears from the evidence that she did not disclose to defendant pursuant to the alleged agreement any item thereafter manufactured by defendant.

7. Plaintiff's claims concerning certain promotional ideas are similarly defective. She cannot recover because such ideas were not covered by the alleged agreement and did not originate with her, but even accepting plaintiff's version of the sharply disputed facts, she cannot recover



because her alleged ideas were not novel, original or concrete. Moreover, they were not made pursuant to any agreement and were of no value and even the promotional ideas claimed were not used by Aris except briefly and all such promotional ideas were therapeutic claims which were quickly discontinued by defendant after protest by the Food and Drug Administration.

8. Plaintiff can have no recovery for the disclosure of the alleged promotional ideas also, because if used, they would constitute criminal violations of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301(a) and (d), 303(a) and would violate the Federal Trade Commission Act, 15 U.S.C. §§45, 52 , as well.

9. Defendant is entitled to judgment dismissing the Complaint herein.



lefts EX 3 for cd  
1/19/70 MD

Power Net Liner  
Fingers cut out -  
Mitten over &  
attached to  
support  
line  
at  
or

Neck Girth

Made of  
Cotton Knit  
or  
Tweed or  
a washable Gabrie

EXHIBIT A



Service of One copies of this within  
Suff. Appellate is admitted this  
30 day of November 1976.

ATTORNEY FOR Appellant - Cross-Appellee

Care Paul 11/30/76  
Perry's Handwritten  
Att. for Plaintiff  
by J. M. Lee.